

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 2, 2009

D053483 Miller v. Castillo et al.

The judgment is affirmed. Each party is to bear its own costs on appeal. O'Rourke, J.;
We Concur: Nares, Acting P.J., Irion, J.

D052086 People v. Aispuro

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., McIntyre, J.

D050753 Williams et al. v. Nidek Co. et al.

The request for publication of the opinion is denied.

D052448 People v. Jenkins

The petition for rehearing is denied.

D051299 Burgos v. Wheeler et al.

The petition for rehearing is denied.

D054383 In re Byrd on Habeas Corpus

The petition is denied.

D054374 In re Vicks on Habeas Corpus

The petition is denied.

D054516 In re Mims on Habeas Corpus

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D052582 In re K. H., a Juvenile

The commitment order is affirmed, and the San Diego County Juvenile Court is directed to amend it to state that K. H. admitted to a violation of Penal Code section 288a, subdivision (a)(1), and to specify she is not required to register as a sex offender based on the underlying offense and forward a corrected copy to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.

D054192 In re Rodriguez on Habeas Corpus

The petition is denied.

D054531 In re Hurd on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

March 2, 2009 (Continued)

D050186 People v. Brittain et al.

Affirmed. Irion, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D054565 Barrett v. Suarez

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(3).)

D053643 Citizens for Responsible Equitable Environmental Development et al. v. City of San Diego

On January 8, 2009, the court deferred ruling on respondents' opposed motion to dismiss the appeal as moot. Appellant has now filed a request for dismissal. The request is granted. The above-entitled case is hereby dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, Rule 8.244.(c)(2).) In light of the dismissal, no action will be taken on respondents' motion to dismiss the appeal as moot filed on December 17, 2008.

D054261 Durrell v. Sharp Healthcare

The appeal filed December 09, 2008, is dismissed because appellant did not timely designate the record (Cal. Rules of Court, rule 8.121(a)) and did not timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rules 8.122(c), 8.130(b), 8.140).

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 3, 2009

D052814 People v. Erbe

Affirmed. Irion, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D054583 Zolina v. Superior Court of San Diego County/Garcia

The petition for writ of mandate, request for stay, and opposition have been read and considered by Justices Nares, McIntyre and Irion.

This petition involves in limine rulings that are subject to change depending on the development of the evidence. Petitioner has an adequate remedy by appeal following trial. The petition is denied. The stay issued on February 17, 2009, is vacated.

D054537 In re Lafaver on Habeas Corpus

The petition is denied.

D050493 Webb v. San Diego Pain Management Consultants

For the reasons set forth herein, the court on its own motion, Justice Benke presiding, with the concurrence of Justices McDonald and McIntyre, dismisses the appeal of San Diego Pain Management Consultants (San Diego Pain).

San Diego Pain's appeal along with the appeal of its principal shareholder, Kevin Barkal, has twice been set for oral argument in this court. Twice on the eve of oral argument, the appeal of both appellants was stayed because of bankruptcy proceedings initiated by Barkal. Each of those bankruptcy proceedings was subsequently dismissed.

On January 20, 2009, the court granted respondent's motion to dismiss Barkal's appeal on the grounds that Barkal failed to comply with orders of the trial court. Also, on January 20, 2009, the court granted appellants' counsel's motion to withdraw as counsel for San Diego Pain and directed that San Diego Pain provide this court with the name of its counsel or the efforts made to retain counsel. San Diego Pain has failed to do so. Although in related appeals Barkal has telephonically identified an attorney who he believes will represent him in those appeals, counsel has not responded to efforts to contact him with respect to this appeal and his potential representation of San Diego Pain.

As a corporation, San Diego Pain may not represent itself and must appear by an attorney. (See *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.) Having failed to correct this defect within a reasonable period of time, San Diego Pain's appeal is dismissed and the order setting the case on calendar is vacated. Respondent to recover her costs of appeal.

D052340 People v. Fraser

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., McIntyre, J.

D052338 People v. Gough

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

March 3, 2009 (Continued)

D052519 People v. Bunch

The true findings on the section 11370.2, subdivision (a) allegations are reversed, the sentence vacated, and the cause remanded for a new trial on the priors and for resentencing. The judgment is affirmed in all other respects. McConnell, P.J.; We Concur: Huffman, J., O'Rourke, J.

D054350 In re Threat on Habeas Corpus

The petition is denied.

D052293 In re Manuel Soares on Habeas Corpus

The request for reconsideration received February 24, 2009, has been read by Justices Nares, McIntyre and Irion.

The denial of a petition for a writ within the appellate court's original jurisdiction without issuance of an alternative writ or order to show cause is final immediately. (Cal. Rules of Court, rule 8.387 (b)(2)(A).) The petition for writ of habeas corpus was summarily denied on April 9, 2008. This court is without jurisdiction to reconsider the matter.

The clerk is directed to retain one copy of the request for reconsideration for our records and return the original and all other copies to petitioner.

D051917 Hance v. Smith

The order is affirmed and the matter remanded to the trial court for a determination of the proper amount of attorney fees in accordance with this opinion. In addition to attorney fees, Hance shall recover costs on appeal. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

D054644 In re Wilson on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Nares, McIntyre and Irion.

In this petition, Jabari Wilson challenges revocation of his parole for violating a special condition of parole that relates to a strike prior conviction, and not the offense to which he pleaded (robbery). Wilson indicates that he has not filed a petition with any other court. Application for writ relief should be made in the lower court in the first instance. (*In re Steele* (2004) 32 Cal.4th 682, 692.) The petition is denied without prejudice to re-filing in San Diego County Superior Court, 220 West Broadway, San Diego, California 92101.

D054653 People v. Herrera

The transfer is denied.

D051491 Erreca's Inc. v. Safeco Insurance Company of America et al.

Judgment reversed and the matter is remanded to the superior court. Each party to bear its own costs. Haller, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

March 3, 2009 (Continued)

D054654 Spencer v. Superior Court of San Diego County/Oliver

The petition for writ of mandate has been read and considered by Justices Nares, McIntyre and Irion. The petition is denied.

D054576 Duyan v. Buckley

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(3).)

D054483 Marc L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Marc L. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D051864 Fowler v. LaSalle Bank, N.A.

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 4, 2009

D052603 People v. Weaver

The judgment is modified to reflect \$200 restitution and parole revocation fines in case number SCD186134 and \$500 restitution and parole revocation fines in case number SCD198275 in place of the higher fines. The judgment in case number SCD186134 is modified to reflect that the stay on the \$200 probation revocation fine is lifted. The case is remanded to the trial court so that it may exercise its discretion to strike the Health and Safety Code section 11370.2, subdivision (a) enhancements pursuant to Penal Code section 1385 or impose them. In all other respects, the judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D052279 People v. Thompson

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., O'Rourke, J.

D053794 People v. Bernabeo

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Haller, J.

D052965 Curren v. San Diego Painting

The judgment is affirmed. Motion for sanctions on appeal denied. Appellant is to bear respondents' costs on appeal. Haller, J.; We Concur: Benke, Acting P.J., Nares, J.

D053517 In re M. N. et al., Juveniles

The appeal is dismissed. McConnell, P. J.; We Concur: McIntyre, J., O'Rourke, J.

D052974 People v. Payan

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D054278 In re Juan R., a Juvenile

The appeal is dismissed. Huffman, Acting P. J.; We Concur: O'Rourke, J., Aaron, J.

D054069 In re Austin H. et al., Juveniles

The appeal is dismissed. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

D053475 In re Zepeda on Habeas Corpus

The order is reversed. O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.

D054588 Selinger v. Carlsbad Auto Service Inc., et al.

David Selinger's request for permission to appeal received by this court on February 26, 2009, is denied. (Code of Civ. Proc. § 391.7, subd. (b).) Selinger's objection and request to vacate this court's February 17, 2009, is denied. The appeal filed with the Superior Court on February 10, 2009, is dismissed. No action will be taken on respondents' motion to dismiss the appeal with prejudice because the court dismissed the appeal on its own motion.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 4, 2009 (continued)

D052180 People v. Rios

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D051999 People v. Veizaga, Jr.

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Aaron, J.

D052531 People v. Puckett

The petition for rehearing is denied.

D054085 In re Charity on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 5, 2009

D052089 People v. Harbour

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.

D052259 People v. Roche

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Nares, J.

D053251 Conservatorship of the Person of Amanda B.

The judgment is affirmed. Aaron, J.; We Concur: Haller, Acting P.J., McIntyre, J.

D053824 In re Twyne on Habeas Corpus

The petition is denied.

D054044 Martinez v. Workers' Compensation Appeals Board et al.

The petition is denied.

D052093 People v. Gauldin

D053283 In re Gauldin on Habeas Corpus

The pending petition for writ of habeas corpus, in re Gauldin, D053283, is consolidated with the pending appeal, People v. Gaulding, D052093, for disposition.

D052093 People v. Gauldin

D053283 In re Gauldin on Habeas Corpus

(Consolidated) The judgment is affirmed and the petition for writ of habeas corpus is denied. McIntyre, J.; I Concur: Haller, J., Concurring and Dissenting: Huffman, Acting P.J.

D052938 People v. Tinoco

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D053258 People v. Andrew O.

The \$264 restitution order is reversed. In all other respects the judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Aaron, J.

D054450 Rosiles v. Imperial County

Pursuant to California Rules of Court, rule 8.140, the appeal filed January 16, 2009, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).

D054250 Kiewit Pacific Co. v. Superior Court of San Diego County/Burnside et al.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 5, 2009 (Continued)

D054527 In re McDaniel on Habeas Corpus
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 6, 2009

D053648 In re Daniel P., a Juvenile

The judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D053626 Kriebel v. Lingo et al.

The judgment is affirmed. Fierro shall recover costs on appeal. McDonald, J.;
We Concur: Nares, Acting P.J., McIntyre, J.

D052365 Bradley et al. v. Networks International, LLC

Order modifying opinion and denying petition for rehearing. No change in judgment.

D052365 Bradley et al. v. Networks International, LLC

Order denying request for publication.

D052491 People v. Sandoval

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

D053954 People v. Haman

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D052028 In re the Marriage of Baldwin

The judgment is affirmed. Each party is to bear its own costs on appeal. O'Rourke, J.;
We Concur: McConnell, P.J., Irion, J.

D054243 Hoppus et al. v. Tommasino et al.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party shall bear its own costs on appeal.